

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MR. AND MRS. GREGORY SWECKER, Complainants, V, MIDLAND POWER COOPERATIVE, Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued June 28, 1999)

In 1998, Mr. and Mrs. Swecker installed a wind generator on their farm, and requested three-phase electrical service from their electric service provider, Midland Power Cooperative (Midland). This led to a dispute between the Sweckers and Midland over which tariff provisions should apply, and ultimately to disconnection and reconnection of power to the farm. On May 5, 1999, Mr. Greg Swecker filed a request for formal complaint proceedings regarding the dispute with Midland. The Sweckers had previously filed complaints with the Iowa Utilities Board (IUB) and with the U.S. Federal Energy Regulatory Commission, and those complaints had not been resolved to the satisfaction of the Sweckers.

Pursuant to Iowa Code §476.3(1)(1999) and 199 Iowa Admin. Code §6.5, a hearing regarding this complaint will be held.

The statutes and rules involved in this case include Iowa Code Chapter 476, and Utility Division rules at 199 Iowa Admin. Code 1.8, and Chs. 6, 7, and 20.

The issues. The issues in this case generally involve the disconnection of the Sweckers' electric service, the reconnection charges, and the cogeneration tariff which Midland would apply to the Sweckers. Specifically, one issue is whether Midland's Tariff 26.16 unreasonably discriminates against customers, such as the Sweckers, who use or intend to use renewable energy sources, in violation of Iowa Code § 476.21, particularly when compared to the terms and conditions for similar service under Midland's Tariff 26.11. A second issue involves whether Midland was obligated to accept the March 21, 1999 check offered by the Sweckers for their past due bills, when acceptance of that check might also have obligated Midland to an unfavorable resolution of the tariff dispute. Other issues may be raised by the parties prior to and during the hearing.

Prepared testimony and exhibits. All parties will have the opportunity to respond and present evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. IOWA CODE § 17A.12(4) (1999). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. IOWA CODE §§ 17A.12(6) and 17A.12(8) (1999).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. IOWA CODE §§ 17A.14(1), 17A.14(3)(1999). This procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

Party status. Mr. and Mrs. Swecker, the Consumer Advocate, and Midland Power Cooperative are presently parties to this proceeding. Currently, the Sweckers and Midland Power Cooperative are unrepresented by legal counsel. Attorney Jennifer C. Easler will represent the Consumer Advocate.

Each party must file an appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance should substantially conform with 199 Iowa Admin. Code §2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The

appearance should be accompanied by a certificate of service that conforms to 199 IOWA ADMIN. CODE §2.2(16) (1996), which verifies that a copy of that document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

The materials that have been filed in this docket are available for inspection at the offices of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319.

All parties should examine 199 IOWA ADMIN. CODE §1.8 and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Attached to this Order and Notice of Hearing is a document which discusses the ex parte communication laws as they apply to this case.

IT IS THEREFORE ORDERED:

1. On or before July 12, 1999, the Sweckers must file prepared direct testimony and exhibits. Pursuant to 199 Iowa Admin. Code §6.7 and the Board Order dated June 23, 1999, the written complaint and all other materials and supplemental information from the informal complaint proceedings, identified as Docket No. C-99-76, are a part of the record of this proceeding. The prepared direct testimony may refer to any document already in the record, and the Sweckers do not

need to refile exhibits already submitted in the informal complaint process and made a part of the record. If the Office of Consumer Advocate is going to file prepared testimony or exhibits, it must do so by July 12, 1999, and may also refer to evidence already in the record without refiling exhibits.

2. On or before August 2, 1999, Midland must file prepared responsive testimony and exhibits. Midland may refer to any document already in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Midland must provide cost-based justification for the different treatment of customers under Tariffs 26.16 and 26.11, evidence that the tariffs are based upon the same cost-of-service methodology that Midland uses in establishing its other rates, evidence that the tariffs are applied in a nondiscriminatory manner to similarly situated customers, and any other evidence Midland believes will support its case.

3. On or before August 23, 1999, the Sweckers must file prepared rebuttal testimony and exhibits. If the Office of Consumer Advocate will file prepared rebuttal testimony and exhibits, it must do so by August 23, 1999.

4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Conference Room 3, Iowa Utilities Board Office, 350 Maple Street, Des Moines, Iowa, on September 8, 1999, commencing at 10:00 a.m. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

5. If required, a briefing schedule will be arranged at the conclusion of the hearing.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to IOWA ADMINISTRATIVE CODE 199-7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

7. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 Iowa Admin. Code §7.2(7). The person must file a petition to intervene on or before twenty days following the date of issuance of this Order, unless the petitioner has good cause for the late intervention. 199 Iowa Admin. Code §7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 28th day of June, 1999.